

FINAL ORDER

Date: 12/7/08

IN THE MATTER OF

JUSTIN R. FRAIZER

Applicant

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BEFORE THE

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COMMISSIONER OF

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FINANCIAL REGULATION

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OAH NO.: DLR-CFR-76B-08-25545

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PROPOSED ORDER

The Proposed Decision of the Administrative Law Judge in the captioned case having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 12th day of November, 2008 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.



Sarah Bloom Raskin

Commissioner of Financial Regulation

JUSTIN RAY FRAZIER,

APPLICANT

v.

COMMISSIONER OF FINANCIAL

REGULATION

* BEFORE LAURIE BENNETT,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

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OAH CASE NO: DLR-CFR-76B-08-25545

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PROPOSED DECISION

STATEMENT OF THE CASE

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STATEMENT OF THE CASE

On February 20, 2008, the Maryland Commissioner of Financial Regulation ("CFR"), Department of Labor, Licensing and Regulation, denied the Applicant's application for a mortgage originator's license. On or about March 5, 2008, the Applicant filed an appeal, after which the CFR referred the matter to the Office of Administrative Hearings ("OAH") for a hearing.¹

I held a hearing on August 20, 2008 at the OAH in Hunt Valley, Maryland. Assistant Attorney General Matthew A. Lawrence represented the CFR. The Applicant represented himself.

I heard this case pursuant to section 11-518 of the Financial Institutions Article

¹ The CFR delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a proposed order.

("FI"), Annotated Code of Maryland (Supp. 2007).² Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 & Supp. 2007), OAH's Rules of Procedure, Code of Maryland Regulations ("COMAR") 28.02.01, and COMAR 09.01.03.

ISSUES

Did the Department properly deny the Applicant's application for a mortgage originator's license?

SUMMARY OF THE EVIDENCE

Exhibits

The CFR submitted the following documents, which I admitted into evidence:

- Fin. Reg. 1. Letter, dated December 21, 2007, from George Walp, Administrative Specialist at office of the CFR
- Fin. Reg. 2. Letter, dated December 28, 2007, from the Applicant to Mr. Walp
- Fin. Reg. 3. Letter, dated January 17, 2008, from the Department of Public Safety and Correctional Services, Information Technology Division, to the CFR;
Criminal Justice Information system report
- Fin. Reg. 4. Maryland Judiciary Case Search Results
- Fin. Reg. 5. Letter, dated February 20, 2008, from George Walp, Administrative Specialist at office of the CFR

The Applicant did not offer exhibits.

² All FI references are to the 2007 Supplement.

Testimony

The Applicant testified and presented the following witnesses: Monica Rose and John Michael Lucas, both from First Houston Mortgage, Ltd., and Douglas Elliott Brooks, who knows the Applicant from church and from Alcoholics Anonymous.

The CFR did not present witnesses.

FINDINGS OF FACT

Having considered the evidence, I find the following facts by a preponderance of the evidence:

1. On December 13, 2007, the Applicant filed an internet application for a mortgage originator's license with the CFR. As part of the application process, the Applicant disclosed his criminal history.
2. That history included the Applicant having pleaded guilty to theft over \$500.00 on April 12, 2007. The court entered a disposition of probation before judgment, which the Applicant violated. As a result, the court withdrew the probation before judgment and sentenced him to 24 months in jail with all but nine months suspended. After the Applicant was released from incarceration, he was on home detention until August 19, 2008. The Applicant is on probation until April 12, 2010.
3. The theft offense involved the Applicant having stolen over \$15,000.00 in a scheme that involved a fictitious business. The Applicant was in the mortgage business at the time, although the offense did not include misusing client information.
4. The Applicant attends self-help groups, including Alcoholics Anonymous and

Celebrate Recovery, six to seven times per week.

5. The Applicant works for First Houston Mortgage, Ltd., where he is a reliable, motivated, responsible and valued employee.

DISCUSSION

The Applicant applied for a mortgage originator's license.³ The CFR denied the application on the grounds that he does not possess good moral character and a general fitness to warrant the belief that he will act as a mortgage originator in a lawful, honest, fair, efficient manner, as required by FI section 11-605(a)(2); and he committed an act that if committed as a mortgage originator would have been grounds for suspension or revocation of an originator's license, as provided in FI section 11-605(b). The underlying basis for the CFR's decision is that the Applicant stole more than \$15,000.00 in a scheme involving a fictitious business.⁴

The Applicant admits to having engaged in a scheme involving a fictitious business, although he disputes having stolen \$15,000.00. He explained that one of the people involved in the scheme gave him the money but later claimed that the Applicant

³ Maryland law defines a mortgage originator as an individual who:

- (i) Is an employee of a mortgage lender that:
 1. Is a mortgage broker as defined in § 11-501(h) of this title; or
 2. Has or will have a net branch office at or out of which the individual works or will work;
 - (ii) Directly contacts prospective borrowers for the purpose of negotiating with or advising the prospective borrowers regarding mortgage loan terms and availability;
 - (iii) Receives from the mortgage lender compensation that is calculated:
 1. As a percentage of the principal amount of mortgage loans originated by the individual; or
 2. As a percentage of the interest, fees, and charges received by the mortgage lender that result from mortgage loan transactions originated by the individual; and
 - (iv) Is authorized to accept a loan application on behalf of the mortgage lender.
- (2) "Mortgage originator" does not include an individual who:
- (i) Owns a 25 percent or more interest in the mortgage lender; or
 - (ii) Is licensed under Subtitle 5 of this title.

Md. Code Ann., Fin. Reg. article, §11-601(k)(2).

⁴ The Applicant has a misdemeanor conviction for possession of marijuana from 2003. In 2007, a court entered a disposition of *nolle prosequi* to possession of marijuana. The CFR noted at the hearing that these incidents have no bearing on its licensure decision.

stole a check and took the money from his checking account. In order to plead guilty to the theft charge, however, the Applicant must have agreed to the prosecutor's statement of charges, which would have included the theft of over \$15,000.00. To deny that fact now is contrary to his plea. Nonetheless, the conviction alone is grounds to deny his application because it is an act for which a licensed mortgage originator may be disciplined. FI section 11-605(b). The CFR may take disciplinary action against a licensee if the licensee (1) "[i]s convicted under the laws of the United States or of any state of a felony or a misdemeanor that is directly related to the fitness and qualification of the individual to act as a mortgage originator" and (2) "[o]therwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly." FI sections 11-615(a)(2) and (a)(5). Even though he did not use client information in the crime, he was involved in the mortgage industry at the time of the offense.

The Applicant's dishonest business dealings cast a reasonable and serious doubt on his fitness to act as a mortgage originator, where he would have the opportunity to take advantage of the public in financial transactions. As a result, he does not meet the requirements of section 11-605(a)(2).

Thus, the CFR has ample grounds to deny the Applicant's application. The Applicant responded by noting that he has been making significant efforts to turn his life around. He attends self-help groups nearly every day and he is proving himself at his job at First Houston Mortgage. In support, he presented testimony from two members of the First Houston Mortgage management team for the Applicant. They unanimously agreed that the Applicant is an outstanding employee who makes a significant contribution to the

business. One witness described him as a true partner with a positive attitude. The other described him as having lots of potential and a bright future. He also presented testimony from someone with whom he attends the self-help groups, who confirmed his commitment and attendance.

In deciding whether a disbarred lawyers was sufficiently rehabilitated for licensure, the Court of Appeals identified four factors to consider:

- the nature and circumstances of the original misconduct;
- petitioner's subsequent conduct and reformation;
- his present character; and
- his present qualifications and competence to practice law.

In re Braverman, 271 Md. 196, 199-200 (1974); *In re Barton*, 273 Md. 377, 380 (1974).

In applying those factors to the Applicant's case, I conclude that he is not yet sufficiently rehabilitated. The criminal behavior involved dishonest business dealings. At the time of the hearing, the Applicant had only been released from incarceration for three weeks and he had only been off home detention for one day. He had only been working for First Houston Mortgage a short time

I admire the Applicant's efforts to improve his life and believe he is motivated and committed to change. It is simply too soon to predict whether the change will be permanent. Even the CRT noted at the hearing that it may view the application differently with the passage of time.


CONCLUSIONS OF LAW

I conclude as a matter of law that the CFR properly denied the Applicant's application for a mortgage originator's license. Md. Code Ann., Fin. Inst., §§11-605(a)(2) and 11-605(b).

RECOMMENDED ORDER

I RECOMMEND that the Maryland Commissioner of Financial Regulation deny the Applicant's application for a mortgage originator's license.

September 15, 2008
Date Decision Mailed



Laurie Bennett
Administrative Law Judge

LB/jf
Doc #99444